

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:07-CR-00023-KDB-DCK

USA

v.

BRIAN DARNELL HENDERSON [2]

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ORDER

THIS MATTER is before the Court upon motion and amended motion of the defendant pro se for a reduction of sentence based on the First Step Act of 2018. (Docs. No. 270 and 272).

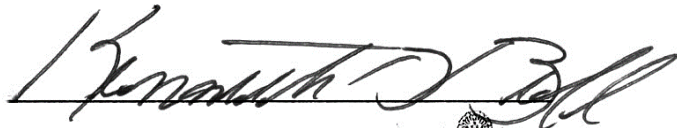
The defendant was found guilty of conspiracy to possess with intent to distribute crack cocaine and cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count One), possession with intent to distribute crack cocaine and cocaine and aiding and abetting same, in violation of 21 U.S.C. § 841(b)(1)(A) and §841 (b)(1)(C) (Count Three), possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count Four), and possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1) (Count Five). (Doc. No. 112). Section 404(c) of the First Step Act specifies that a court “shall not entertain” a reduction motion where the sentence was imposed in accordance with the Fair Sentencing Act of 2010. Here, the defendant was resentenced on May 5, 2014, (Doc. No. 232: Judgment at 1), well after the effective date of the Fair Sentencing Act and in accordance therewith, and pursuant to *United States v. Simmons*, 649 F.3d 237 (4th

Cir. 2011) (en banc) and the 2013 Guidelines Manual. Therefore, he is not eligible for a sentence reduction under the First Step Act.

IT IS, THEREFORE, ORDERED that the defendant's motion and amended motion, (Docs. No. 270 and 272), are **DENIED**.

The Clerk is directed to certify copies of this Order to the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: May 18, 2020

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

